

ECONOMIC DEVELOPMENT AUTHORITY[261]

Adopted and Filed

Rule making related to workforce housing tax incentives program

The Economic Development Authority hereby amends Chapter 48, “Workforce Housing Tax Incentives Program,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is adopted under the authority provided in Iowa Code section 15.106A and 2021 Iowa Acts, Senate File 619.

State or Federal Law Implemented

This rule making implements, in whole or in part, 2021 Iowa Acts, Senate File 619.

Purpose and Summary

2021 Iowa Acts, Senate File 619, amends Iowa Code section 15.354 relating to the Workforce Housing Tax Incentives Program. The legislation (1) replaces examination language with a requirement that recipients provide a statement of the amount of final qualified rehabilitation expenditures and any other information deemed necessary by the Authority, (2) allows the Authority to request additional documentation before approving a sales and use tax refund, (3) allows the Authority to establish an application period for the submission of disaster recovery applications and allows for competitive scoring, and (4) adds a provision that a housing business shall meet the requirements set forth in the Authority’s and the Department of Revenue’s rules before claiming a refund of sales and use taxes.

This rule making amends certain definitions, incorporates the examination language from Senate File 619 and further elaborates on the attestation procedure, and amends the disaster recovery housing rules to include the authority to establish an application period and a competitive process. This rule making also updates the Authority’s address.

Public Comment and Changes to Rule Making

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on September 22, 2021, as **ARC 5909C**. No public comments were received.

The following changes from the Notice have been made:

- An additional amendment to paragraph 48.5(2)“d” (new Item 3) was added to be consistent with nonsubstantive changes in the Iowa Code made by 2021 Iowa Acts, House File 739.
- Subsequent items were renumbered accordingly.
- References to processes for claiming tax credits were stricken in subrules 48.6(3) and 48.11(3) (Items 5 and 10 herein).
- The implementation sentence for Chapter 48 has been revised to remove the reference to 2021 Iowa Acts since the amendments in the Acts will be codified by the time this rule making becomes effective.

Adoption of Rule Making

This rule making was adopted by the Authority Board on November 19, 2021.

Fiscal Impact

This rule making has no fiscal impact to the State of Iowa.

Jobs Impact

After analysis and review of this rule making, no impact on jobs has been found.

Waivers

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Authority for a waiver of the discretionary provisions, if any, pursuant to 261—Chapter 199.

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its [regular monthly meeting](#) or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

Effective Date

This rule making will become effective on January 19, 2022.

The following rule-making actions are adopted:

ITEM 1. Amend rule **261—48.3(15)**, definition of “Costs directly related,” as follows:

“*Costs directly related*” means expenditures that are incurred for construction of a housing project to the extent that they are attributable directly to the improvement of the property or its structures. “Costs directly related” includes expenditures for ~~property acquisition~~, site preparation work, surveying, construction materials, construction labor, architectural services, and engineering services, ~~building permits, building inspection fees, and interest accrued on a construction loan during the time period allowed for project completion under an agreement entered into pursuant to the program.~~ “Costs directly related” does not include expenditures for property acquisition, building permits, building inspection fees, furnishings, appliances, accounting services, legal services, loan origination and other financing costs including interest on construction loans, syndication fees and related costs, developer fees, or the costs associated with selling or renting the dwelling units whether incurred before or after completion of the housing project.

ITEM 2. Adopt the following **new** definition of “Project completion” in rule **261—48.3(15)**:

“*Project completion*” means the same as defined in Iowa Code section 15.355(2).

ITEM 3. Amend paragraph **48.5(2)“d”** as follows:

d. An applicant that does not receive a tax incentive award during an application period may make additional applications during subsequent application periods. Such applicant shall be required to submit a new application ~~and, which~~ shall be competitively reviewed and scored in the same manner as other applicants applications in that application period.

ITEM 4. Amend paragraphs **48.5(3)“d”** and **“e”** as follows:

d. Upon completion of a housing project, ~~an~~ a housing business shall submit all of the following to the authority:

(1) An examination of the project in accordance with the American Institute of Certified Public Accountants’ statements on standards for attestation engagements, completed by a certified public accountant (CPA) authorized to practice in this state, shall be submitted to the authority. The attestation applicable to this examination is SSAE No. 10 (as amended by SSAE Nos. 11, 12, 14), AT section 101 and AT section 601. The procedures used by the CPA to conduct the examination should allow the CPA to conclude that, in the CPA’s professional judgment, the expenditures claimed are eligible pursuant to the agreement; Iowa Code chapter 15, subchapter II, part 17; and all rules adopted pursuant to Iowa Code chapter 15, subchapter II, part 17, in all material respects. Within ten business days of a request

by the authority, the housing business shall make available to the authority the documents reviewed by the CPA unless good cause is shown.

(2) A statement of the final amount of qualifying new investment for the housing project.

(3) Any information the authority deems necessary to ensure compliance with the agreement signed by the housing business pursuant to paragraph 48.5(3) “a”; the requirements of Iowa Code chapter 15, subchapter II, part 17; and these rules and rules adopted by the department of revenue pursuant to Iowa Code section 15.356.

e. Upon review of the examination, and verification of the amount of the qualifying new investment, and review of any other information submitted pursuant to subparagraph 48.5(3) “d”(3), the authority may notify the housing business of the amount that the housing business may claim as a refund of the sales and use taxes under subrule 48.6(2) and may issue a tax credit certificate to the housing business stating the amount of workforce housing investment tax credits under rule 261—48.6(15) that the eligible housing business may claim. The sum of the amount that the housing business may claim as a refund of the sales and use tax and the amount of the tax credit certificate shall not exceed the amount of the tax incentive award.

ITEM 5. Amend subrule 48.6(3) as follows:

48.6(3) Income tax credits.

a. No change.

b. The tax credit shall be allowed against the taxes imposed in Iowa Code chapter 422, divisions subchapters II, III, and V, and in Iowa Code chapter 432, and against the moneys and credits tax imposed in Iowa Code section 533.329.

c. ~~An individual may claim a tax credit under this subrule of a partnership, limited liability company, S corporation, estate, or trust electing to have income taxed directly to the individual. The amount claimed by the individual shall be based upon the pro rata share of the individual’s earnings from the partnership, limited liability company, S corporation, estate, or trust.~~

d. ~~Any tax credit in excess of the taxpayer’s liability for the tax year is not refundable but may be credited to the tax liability for the following five years or until depleted, whichever is earlier.~~

e. ~~c.~~ (4) To claim a tax credit under this subrule, a taxpayer shall ~~include one or more tax credit certificates with the taxpayer’s tax return~~ file a claim with the department of revenue pursuant to the department’s applicable rules.

(2) ~~The tax credit certificate shall contain the taxpayer’s name, address, tax identification number, the amount of the credit, the name of the eligible housing business, any other information required by the department of revenue, and a place for the name and tax identification number of a transferee and the amount of the tax credit being transferred.~~

(3) ~~The tax credit certificate, unless rescinded by the authority, shall be accepted by the department of revenue as payment for taxes imposed pursuant to Iowa Code chapter 422, divisions II, III, and V, and in Iowa Code chapter 432, and for the moneys and credits tax imposed in Iowa Code section 533.329, subject to any conditions or restrictions placed by the authority upon the face of the tax credit certificate and subject to the limitations of this program.~~

(5) ~~Within 30 days of receiving the transferred tax credit certificate and the transferee’s statement, the department of revenue shall issue one or more replacement tax credit certificates to the transferee. Each replacement tax credit certificate must contain the information required for the original tax credit certificate and must have the same expiration date that appeared on the transferred tax credit certificate.~~

(6) ~~A tax credit shall not be claimed by a transferee under this rule until a replacement tax credit certificate identifying the transferee as the proper holder has been issued. The transferee may use the amount of the tax credit transferred against the taxes imposed in Iowa Code chapter 422, divisions II, III, and V, and in Iowa Code chapter 432, and against the moneys and credits tax imposed in Iowa Code section 533.329, for any tax year the original transferor could have claimed the tax credit. Any consideration received for the transfer of the tax credit shall not be included as income under Iowa Code chapter 422, divisions II, III, and V. Any consideration paid for the transfer of the tax credit shall not be deducted from income under Iowa Code chapter 422, divisions II, III, and V.~~

(4) *d.* Tax credit certificates issued under an agreement entered into pursuant to subrule 48.5(3) may be transferred to any person pursuant to the department's applicable rules. ~~Within 90 days of transfer, the transferee shall submit the transferred tax credit certificate to the department of revenue along with a statement containing the transferee's name, tax identification number, and address, the denomination that each replacement tax credit certificate is to carry, and any other information required by the department of revenue.~~ However, tax credit certificate amounts of less than \$1,000 shall not be transferable.

~~*f.* For purposes of the individual and corporate income taxes and the franchise tax, the increase in the basis of the property that would otherwise result from the qualifying new investment shall be reduced by the amount of the tax credit computed under this subrule.~~

ITEM 6. Amend subrule 48.8(1) as follows:

48.8(1) The authority will develop a standardized application and make the application available to eligible housing businesses and to communities. To apply for assistance under the program, an interested person shall submit an application to the authority. Applications must be submitted online at www.iowagrants.gov. Instructions for application submission may be obtained at www.iowagrants.gov or by contacting the Community Development Division, Economic Development Authority, ~~200 East Grand Avenue~~ 1963 Bell Avenue, Suite 200, Des Moines, Iowa ~~50309~~ 50315.

ITEM 7. Amend paragraph **48.10(1)“a”** as follows:

a. A housing business seeking disaster recovery housing tax incentives pursuant to rule 261—48.11(15) shall make application to the authority in the manner prescribed in this rule. ~~The authority may accept applications on a continuous basis and will review applications in the order received~~ establish a disaster recovery application period following the declaration of a major disaster by the President of the United States for a county in Iowa. The authority will acknowledge receipt of the application and review applications in a timely manner. The authority will notify the applicant within 30 days as to whether the applicants in writing of a tax incentive award for a disaster recovery housing project will be awarded tax incentives pursuant to this rule.

ITEM 8. Amend paragraph **48.10(2)“a”** as follows:

a. ~~Upon review of the application and scoring of all applications received during a disaster recovery application period, the authority may make a tax incentive award to a disaster recovery housing project under the disaster recovery housing program. The tax incentive award shall represent the maximum amount of tax incentives that the disaster recovery housing project may qualify for under the program. In determining a tax incentive award, the authority shall not use an amount of project costs that exceeds the amount included in the application of the housing business. Tax incentive awards shall be approved by the director of the authority.~~

ITEM 9. Amend paragraphs **48.10(3)“d”** and **“e”** as follows:

d. Upon completion of a disaster recovery housing project, an a housing business shall submit all of the following to the authority:

(1) An examination of the project in accordance with the American Institute of Certified Public Accountants' statements on standards for attestation engagements, completed by a certified public accountant (CPA) authorized to practice in this state, shall be submitted to the authority. The attestation applicable to this examination is SSAE No. 10 (as amended by SSAE Nos. 11, 12, 14), AT section 101 and AT section 601. The procedures used by the CPA to conduct the examination should allow the CPA to conclude that, in the CPA's professional judgment, the expenditures claimed are eligible pursuant to the agreement; Iowa Code chapter 15, subchapter II, part 17; and all rules adopted pursuant to Iowa Code chapter 15, subchapter II, part 17, in all material respects. Within ten business days of a request by the authority, the housing business shall make available to the authority the documents reviewed by the CPA unless good cause is shown.

(2) A statement of the final amount of qualifying new investment for the housing project.

(3) Any information the authority deems necessary to ensure compliance with the agreement signed by the housing business pursuant to paragraph 48.10(3)“a”; the requirements of Iowa Code chapter 15,

subchapter II, part 17; and these rules and rules adopted by the department of revenue pursuant to Iowa Code section 15.356.

~~e.~~ Upon review of the examination as described in paragraph 48.10(3) “d,” and verification of the amount of the qualifying new investment, and review of any other information submitted pursuant to subparagraph 48.10(3) “d”(3), the authority may notify the housing business of the amount that the housing business may claim as a refund of the sales and use tax under Iowa Code section 15.355(2), and may issue a tax credit certificate to the housing business stating the amount of disaster recovery housing investment tax credits under rule 261—48.11(15) that the eligible housing business may claim. The sum of the amount that the housing business may claim as a refund of the sales and use tax and the amount of the tax credit certificate shall not exceed the amount of the tax incentive award.

ITEM 10. Amend subrule 48.11(3) as follows:

48.11(3) *Income tax credits.*

a. No change.

b. The tax credit shall be allowed against the taxes imposed in Iowa Code chapter 422, divisions subchapters II, III, and V, and in Iowa Code chapter 432, and against the moneys and credits tax imposed in Iowa Code section 533.329.

~~c.~~ ~~An individual may claim a tax credit under this subrule of a partnership, limited liability company, S corporation, estate, or trust electing to have income taxed directly to the individual. The amount claimed by the individual shall be based upon the pro rata share of the individual’s earnings from the partnership, limited liability company, S corporation, estate, or trust.~~

~~d.~~ ~~Any tax credit in excess of the taxpayer’s liability for the tax year is not refundable but may be credited to the tax liability for the following five years or until depleted, whichever is earlier.~~

~~e. c.~~ (1) To claim a tax credit under this subrule, a taxpayer shall ~~include one or more tax credit certificates with the taxpayer’s tax return~~ file a claim with the department of revenue pursuant to the department’s applicable rules.

(2) ~~The tax credit certificate shall contain the taxpayer’s name, address, tax identification number, the amount of the credit, the name of the eligible housing business, any other information required by the department of revenue, and a place for the name and tax identification number of a transferee and the amount of the tax credit being transferred.~~

(3) ~~The tax credit certificate, unless rescinded by the authority, shall be accepted by the department of revenue as payment for taxes imposed pursuant to Iowa Code chapter 422, divisions II, III, and V, and to Iowa Code chapter 432, and against the moneys and credits tax imposed pursuant to Iowa Code section 533.329, subject to any conditions or restrictions placed by the authority upon the face of the tax credit certificate and subject to the limitations of this program.~~

(5) ~~Within 30 days of receiving the transferred tax credit certificate and the transferee’s statement, the department of revenue shall issue one or more replacement tax credit certificates to the transferee. Each replacement tax credit certificate must contain the information required for the original tax credit certificate and must have the same expiration date that appeared on the transferred tax credit certificate.~~

(6) ~~A tax credit shall not be claimed by a transferee under this rule until a replacement tax credit certificate identifying the transferee as the proper holder has been issued. The transferee may use the amount of the tax credit transferred against the taxes imposed pursuant to Iowa Code chapter 422, divisions II, III, and V, and in Iowa Code chapter 432, and against the moneys and credits tax imposed in Iowa Code section 533.329, for any tax year the original transferor could have claimed the tax credit. Any consideration received for the transfer of the tax credit shall not be included as income under Iowa Code chapter 422, divisions II, III, and V. Any consideration paid for the transfer of the tax credit shall not be deducted from income under Iowa Code chapter 422, divisions II, III, and V.~~

(4) d. A tax credit certificate issued under an agreement entered into pursuant to subrule 48.10(3) may be transferred to any person pursuant to the department’s applicable rules. Within 90 days of transfer, the transferee shall submit the transferred tax credit certificate to the department of revenue along with a statement containing the transferee’s name, tax identification number, and address; the denomination that

each replacement tax credit certificate is to carry; and any other information required by the department of revenue. Tax However, tax credit certificate amounts of less than \$1,000 shall not be transferable.

~~f. For purposes of individual and corporate income taxes and the franchise tax, the increase in the basis of the property that would otherwise result from the qualifying new investment shall be reduced by the amount of the tax credit described under this subrule.~~

ITEM 11. Amend rule 261—48.12(15) as follows:

261—48.12(15) Program funding allocation and management of excess demand.

~~48.12(1)~~ The authority shall allocate \$10 million to disaster recovery housing tax incentives pursuant to rules 261—48.9(15) to 261—48.13(15). In allocating tax credits pursuant to Iowa Code section 15.119(5), as enacted by 2019 Iowa Acts, House File 772, for the period beginning July 1, 2019, and ending June 30, 2024, the authority shall not allocate more than \$10 million for purposes of Iowa Code section 15.119(5).

~~48.12(2)~~ The authority shall issue tax incentives under the program for disaster recovery housing projects on a first-come, first-served basis until the maximum amount of tax incentives allocated under Iowa Code section 15.119(5) is reached.

~~48.12(3)~~ The authority will administer a wait list for disaster recovery housing projects in accordance with Iowa Code section 15.354(6) “d.”

ITEM 12. Amend subrule 48.13(1) as follows:

48.13(1) The authority will develop a standardized application and make the application available to eligible housing businesses and to communities. To apply for assistance under the disaster recovery housing program, an interested person shall submit an application to the authority. Applications must be submitted online at www.iowagrants.gov. Instructions for application submission may be obtained at www.iowagrants.gov or by contacting the Community Development Division, Economic Development Authority, ~~200 East Grand Avenue~~ 1963 Bell Avenue, Suite 200, Des Moines, Iowa ~~50309~~ 50315.

ITEM 13. Amend **261—Chapter 48**, implementation sentence, as follows:

These rules are intended to implement Iowa Code ~~section~~ sections 15.351 to 15.356.

[Filed 11/19/21, effective 1/19/22]

[Published 12/15/21]

EDITOR’S NOTE: For replacement pages for IAC, see IAC Supplement 12/15/21.